

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

DONNA K. SOUTTER, *for herself and on behalf  
of other similarly situated individuals*

Plaintiffs,

Civil Action No. 3:10cv107

v.

EQUIFAX INFORMATION SERVICES, LLC

Defendant.

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF HER FIFTH CONSENT MOTION  
TO AMEND SCHEDULING ORDERS TO ENLARGE TIME TO FILE HER REPLY  
BRIEF IN SUPPORT OF HER RENEWED MOTION FOR CLASS CERTIFICATION**

COMES NOW the Plaintiff, Donna K. Soutter (“Soutter” or “Plaintiff”), by counsel and with consent of the Defendant, and in support of her Fifth Motion To Amend Scheduling Orders To Enlarge Time To File Her Reply Brief In Support Of Her Renewed Motion For Class Certification, she states as follows:

**Overview**

The Plaintiff moves the court for an extension of time to file the reply brief, which is due tomorrow, October 11, 2013. The time has not expired to file the brief, thus this motion is timely made. Although this brief is styled as a consent motion, both parties are in agreement that the case is at a posture where there is a basis for further discussions on possible resolution of the case by compromise. This case has been actively litigated more than three years. It’s been to the Fourth Circuit and back. The parties have not only been diligently litigating the issues, they have remained open to the possibility of achieving a suitable class action settlement. The request for an extension of time for the Plaintiff to file a reply and for the Defendant to sur-reply is mutually agreeable to both sides, not only in the interest of promoting the possibility of settlement, but

also to reduce unnecessary multiplication of efforts by the attorneys and the court. There are other reasons that have occasioned the parties' requests for extensions of time throughout this process. At this time, the parties request the extension in order to explore more meaningful discussions.

### **Procedural History and Current Posture**

In accordance with the Court's June 18, 2010 scheduling order, "Phase I" discovery ended October 8, 2010. (Docket No. 42). After briefing as to Plaintiff's original motion for class certification, appeal to the Court of Appeals for the Fourth Circuit and remand, the Court entered a new schedule for renewed class certification briefing, ultimately requiring Plaintiff's reply brief in support of her Renewed Motion for Class Certification to be filed no later than May 3, 2013. (Docket No. 134). On April 29, 2013, the Court entered an order allowing the Plaintiff to conduct additional discovery and extending the time to file her reply brief in support of Plaintiff's Amended Motion for Class Certification until June 28, 2013 (Docket No. 138). On June 28, 2013, the Court entered an order continuing those deadlines until July 29, 2013 (Docket No. 142). On July 29, 2013, the Court entered a second order continuing those deadlines until September 27, 2013 (Docket No. 146). On October 2, 2013, the Court further extended those deadlines until October 11, 2013 (Docket No. 149).

Pursuant to Fed. R. Civ. P. 16(b)(4), a scheduling order may be modified for good cause and with a judge's consent. Additionally, under Rule 6(b), the court may, for good cause, extend the time to respond to a motion upon request from a party prior to the expiration of the original deadline. Fed. R. Civ. P. 6(b)(1)(A).

On April 19, 2013, Equifax filed its response brief and in its opposition Defendant presented a new declaration from Mark Johnson on behalf of third party LexisNexis Risk Data

Retrieval Services, LLC (“LexisNexis”) (Docket No. 135-1). Equifax also filed related documentary evidence compiled and created after Plaintiff’s filing of the renewed class certification motion and raised factual claims not previously the subject of Defendant’s disclosed evidence or Plaintiff’s discovery. This ultimately led to this Court’s entry of an order on April 29, 2013 permitting the Plaintiff to conduct limited discovery regarding this new evidence and extending the deadline for the Plaintiff to file her reply brief in support of her Renewed Motion for Class Certification until June 28, 2013.

Plaintiff’s counsel took the deposition of Mark Johnson on June 12, 2013 regarding his declaration and related documentary evidence. Following this deposition, on June 19, 2013, Plaintiff requested that Lexis-Nexis produce the names of all of the independent contractors who have collected public records on its behalf in Virginia. Lexis Nexis ultimately identified seven such individuals, but Plaintiff did not receive any of the requested information until July 11, 2013 – almost a month later. Despite this, Plaintiff’s counsel issued subpoenas ad testificandum and duces tecum to these seven individuals the very next day. However, shortly thereafter, Ronald Raether, counsel for LexisNexis, sent Plaintiff’s counsel an email identifying himself as counsel for five of the seven independent contractors that were served with subpoenas. Mr. Raether represented that two of the contractors would be out of town on a long planned vacation during the week that the depositions were scheduled. Furthermore, he represented that none of his clients would be able to produce documents or appear for depositions on the dates listed in the subpoenas. Mr. Raether and Plaintiff’s counsel agreed that his client would produce documents on August 6, 2013 and that they would work to reschedule the depositions at a time in mid-August that would work for these third party contractors.

Plaintiff’s counsel worked with Mr. Raether and conducted depositions of four of the

contractors represented by Mr. Raether on August 28, 2013 and September 5, 2013. Despite their best attempts to expedite the order of the deposition transcripts from these depositions, Plaintiff's counsel did not receive the full set of deposition transcripts until September 24, 2013.

Plaintiff does not bring this motion lightly. Both parties have remained actively engaged in the litigation of this case. Since both parties have now had a chance to review the deposition transcripts of the Lexis-Nexis employees, they are continuing to work together and are in the process of determining if a material difference might be resolved before the filing of Plaintiff's reply brief. To further those efforts, Plaintiff asks the Court for an additional thirty-day extension of time in which to file her reply brief. The Defendant has consented to this extension of time. Additionally, the Defendant will suffer no legal prejudice as a result of an extension and the interests of justice will be served by granting this motion.

### **Conclusion**

For good cause shown, Plaintiff respectfully requests that this Court grant her Fifth Motion To Amend Scheduling Orders To Enlarge Time To File Her Reply Brief In Support Of Her Renewed Motion For Class Certification. A Proposed Agreed Order, attached as Ex. 1, is being circulated among counsel for signatures.

Respectfully submitted,  
**DONNA K. SOUTTER,**  
*individually and on behalf of all  
others similarly situated*

/s/  
Susan M. Rotkis, VSB No. 40693  
*Counsel for the Plaintiff*  
CONSUMER LITIGATION ASSOCIATES, P.C.  
763 J. Clyde Morris Blvd., Suite 1-A  
Newport News, VA 23601  
757-930-3660

757-930-3662  
srotkis@clalegal.com

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10th day of October, 2013, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

John W. Montgomery, Jr.  
MONTGOMERY & SIMPSON, LLP  
2116 Dabney Road, Suite A-1  
Richmond, Virginia 23230  
Tel: (804) 355-8744  
Fax: (804) 355-8748  
Email: jmontgomery@jwm-law.com

Barry Goheen  
*PRO HAC VICE*  
King & Spalding (GA-NA)  
1180 Peachtree St NE  
Atlanta, GA 30309-3521  
Tel: (404) 572-4618  
Fax: (404) 572-5142  
Email: bgoheen@kslaw.com

John Anthony Love  
*PRO HAC VICE*  
King & Spalding (GA-NA)  
1180 Peachtree St NE  
Atlanta, GA 30309-3521  
Tel: (404) 215-5913  
Fax: (404) 572-5100  
Email: tlove@kslaw.com

Keasha Ann Broussard  
*PRO HAC VICE*  
King & Spalding (GA-NA)  
1180 Peachtree St NE  
Atlanta, GA 30309-3521  
Tel: (404) 215-5725  
Fax: (404) 572-5100  
Email: abroussard@kslaw.com

*Counsel for the Defendant*

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/s/  
Susan M. Rotkis, VSB No. 40693  
*Counsel for the Plaintiff*  
CONSUMER LITIGATION ASSOCIATES, P.C.  
763 J. Clyde Morris Blvd., Suite 1-A  
Newport News, VA 23601  
757-930-3660  
757-930-3662  
srotkis@clalegal.com